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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
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REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 12/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/072,447

Applicant(s)

KATZ, JILL

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

#### *Drawings*

1. The drawings were received on 10-06-03. These drawings are not approved.

The drawings filed 10-06-03 did not comply with 37 CFR 1.121 as revised because only one set of marked up drawings were submitted and they were not labeled "Annotated Marked-up Drawings" and no set of drawings labeled "Replacement Sheet" was submitted.

2. The drawings are objected to because in Figure 1, the lines or arrows from 13, 14 and 32 should be dashed to denote underlying structure. This also applies to the lines from 33 and 34 in Figure 2. In Figure 1, there are several undenoted lines. Also where is 35 shown? A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the resilient fasteners as claimed in claims 4 and 8 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Description***

4. The amendment filed 10-6-03 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the abstract, last line, i.e. "while ... position".

Applicant is required to cancel the new matter in the reply to this Office Action.

As best understood "while ... position" includes support other than the wearer supporting themselves, i.e. a self-supporting wearer. Where does the specification as originally filed support supporting the wearer of the diaper in the stand-up position? If applicant traverses this objection the specific portion of the specification as originally filed, i.e. page, line and/or Figure, relied upon should be set forth.

***Claim Objections***

5. Claims 1, and 3-10 are objected to because of the following informalities: in claim 1, line 8, "a"(first) should be --the--. In claim 6, "opposite" should be --opposed-- and after "crotch panel", --portion-- should be inserted and "front panel" should be --one piece front-- and "said back" should be --back--. In claim 9, line 5, after "panel" --portion-- should be inserted. Appropriate is required.

***Claim Rejections - 35 USC § 112***

6. Claim 9 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described

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in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. As already discussed above, where does the specification as originally filed support supporting the wearer of the diaper in a standing position? If applicant traverses this objection the specific portion of the specification as originally filed, i.e. page, line and/or Figure, relied upon should be set forth.

7. Claims 1, and 3-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, lines 11-13 are incomplete, i.e. what does the crotch panel portion connect the one-piece front and back panel to? The front and back panel includes a front portion, a back portion and a crotch panel portion connecting the front portion and the back portion. Note claim 6.

### ***Claim Language Interpretation***

8. Since the one piece front and back panel includes more than one piece, i.e. an inner layer, an outer layer, a pad, the terminology "one piece front and back panel" is interpreted to mean that the elements making up such are attached to form a whole, i.e. does not require monolithic formation. It is noted that the dictionary definition of "one-piece" is "consisting or fashioned in a single whole piece: a one-piece bathing suit". As best understood and supported by the specification, in claim 9, "supporting ... position" is interpreted to include that the wearer is standing of their own accord, see page 2, lines 7-10 of the originally filed specification.

***Claim Rejections - 35 USC § 103***

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 1, 3-8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fahrenkrug et al '498 in view of Ahr et al '802.

See claim language interpretation section supra, Figures 12-17, i.e. preformed body, 82; a one piece front and back panel, see Figures and col. 13, lines 5-12; free ends, adjacent 122 and 120 and col. 12, line 58-col. 13, line 12 and col. 13, lines 27-30; an upper waistband portion, adjacent the waist edge; a crotch portion, adjacent 90, 92; lateral edges, adjacent 95; a first leg opening, adjacent 96 in Figure 17; a second leg opening, opposite the first leg opening when the fasteners are attached; fastener elements, 120, 122; impervious layer, 86, 88 and col. 3, line 66-col. 4, line 2 and col. 7, line 67-col. 8, line 18; pervious liner, 84 and col. 5, line 66-col. 6, line 17, pad, 90, 92; resilience in waistband portion, 94, resilience in fasteners, 94 and col. 12, line 67-col. 13, line 2, i.e. elastic band portion forming part of fastener; and lateral edge elastic material, 95 or 94 and 95. Applicant claims a diaper adapted for quick changing a standing wearer and a gas permeable outer layer. It is clear from the Figures and, e.g., col. 13, lines 27-37 that a leg is inserted through the preformed leg opening by a standing wearer, i.e. "step", and the garment is changed, i.e. "during use". It is noted that the claim language "quick" is considered relative so the Fahrenkrug et al reference is considered to be "quickly" changeable. Fahrenkrug et al in col. 1, line 17-col. 2, line 18 also sets forth the invention as an absorbent product, see col. 2, lines 14-18, and defines an absorbent product as including diapers as well as adult incontinent

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devices, see col. 1, lines 62-65 and then col. 1, lines 17-61. Therefore, the Fahrenkrug device includes all the claimed structure except for the gas permeable outer layer. Note page 5, lines 2-15 of the instant specification. Also see Ahr et al, title, col. 4, lines 46-54 and col. 6, lines 19-40, i.e. interchangeability of liquid impermeable films for liquid impermeable, vapor permeable films in absorbent garments. To make the outer cover liquid impermeable film of the Fahrenkrug absorbent garment a liquid impermeable/gas permeable film instead would be obvious in view of the interchangeability as taught by Ahr et al. Note also col. 2, line 27. With regard to claim 6, see, e.g., Figures 16-17.

11. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fahrenkrug et al '498 in view of Ahr et al '802 and Meisels '501.

See discussion of claim 1 supra. Applicant further claims a method of applying the diaper of claim 1 to a standing person including the steps of supporting the wearer in a standing position, inserting a leg in the preformed leg opening, adjusting the diaper so that the crotch panel engages the standing wearer between the legs, and wrapping the front and back panels about the torso, bringing the free ends of the panels into contact with each other and securing the fastener elements together, i.e. securing the diaper in place and forming the other leg opening. While it is clear, see portions cited supra, that a leg is inserted through the preformed leg opening while standing, the diaper or pad is adjusted so that the crotch panel engages between the legs while standing, see Figure 17, and the front and back panels are wrapped to bring the free ends and thus the fastener elements together while forming another leg opening while standing, see Figure 17, it is not clear that the fastener elements are manipulated during application rather than prior to or after application. With regard to the supporting step, see the claim interpretation

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section supra and Figure 17, the wearer as seen is self-supporting. The garment is for use with adults, see discussion supra, to provide close contact, i.e. good fit, and to concentrate the absorbent in the needed area to the greatest extent possible, see Summary of the Invention section of Fahrenkrug. Note also col. 12, lines 27-29, i.e. unintentional tearing is not desired. Furthermore it is well known that adults put garments with preformed leg holes on while standing and by inserting a leg through the appropriate preformed opening, pulling the garment up until the crotch portion of the garment is properly positioned, and, if a securement means is present, fastening the securement means. See, e.g., Meisels. Meisels also teaches securing fastening elements of an elasticized absorbent garment during application rather than prior thereto to provide for donning without tearing of the garment. Therefore, to apply the Fahrenkrug device such as, for example, taught by Meisels, i.e. as claimed, i.e. while standing, securing the fastener elements during application, would be obvious to one of ordinary skill in the art in view of the recognition that such is the well known manner to apply preformed garments and apply without tearing of the garment and the desire of Fahrenkrug to provide a garment for adults which provides good fit while concentrate the absorbent in the needed area. It is noted that if the garment would tear, such would not be properly positioned on the wearer and a good fit is not achieved.

### ***Response to Arguments***

12. Applicants remarks on pages 7-10 have been noted but are either deemed moot in that they have not been reraised or are deemed nonpersuasive for the reasons set forth supra. It is noted that the arguments on page 8 are narrower than the claim language in that the claims do not



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require an infant wearer, no other clothing be worn or changing by a person other than the wearer.

***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The other cited art teach side opening garments.

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the amendments to claims 1 and 9.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

*K.M. Reichle*  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
December 1, 2003